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36671 7590 12/30/2009 DITTHAVONG MORI & STEINER, P.C. 918 Prince Street Alexandria, VA 22314				
EXAMINER				
LEE, CHUN KUAN				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com

Office Action Summary

Application No.

10/589,155

Applicant(s)

PEDERSEN ET AL.

Examiner

Chun-Kuan Lee

Art Unit

2181

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2009 and 30 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-28,34-41,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) 17-28,34-40,43 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-16 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-546)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/11/2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

RESPONSE TO ARGUMENTS

1. Applicant's arguments filed 07/14/2009 and 03/30/2009 have been fully considered but they are not persuasive. Currently, claims 2, 11, 29-33 and 42 are canceled, claims 17-28, 34-40 and 43-44 are withdrawn, and claims 1, 3-10, 12-16 and 41 are pending for examination.
2. Applicant's election with traverse of Specie I (claims 1, 3-10, 12-16 and 41) in the reply filed on 08/17/2009 is acknowledged. The traversal is on the ground(s) that Species II to VI are at least partially related to the subject matter recited in the claims of Specie I and that it would not impose undue burden on the examiner to search the claims of Species II to IV as the corresponding claims have already been examined. This is not found persuasive because applicant's Specification clearly discloses and distinguishes each different Species in the different embodiments; and it would be undue burden for the examiner to further search and reconsider each of the different embodiments in light of applicant's 150 pages of disclosure and arguments dated 03/30/2009.

The requirement is still deemed proper and is therefore made FINAL.
3. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not

teach/suggest every claimed feature because Rao teaches away from the claimed invention by specifying the use of a named executable; therefore Rao is not concerned with the claimed invention in any way apart from its relation to use SyncML technology; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because Rao's commands are "enhancement commands" and not conventional commands, and no where in Rao teaches/suggest that Rao's system cannot operate utilizing an unidentified executable or that Rao's system operate utilizing only named executable. Additionally, Rao is analogous art, as Rao is in the field of applicant's endeavor, utilization of the SyncMP technology in a mobile device.

4. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest every claimed feature because DTD does not describe any implementation or uses of SyncML technology; thus DTD does not explain how content information in a data element can be used to produce any technical effect; therefore, DTD does not contain any teaching, suggestion or motivation to adapt the information it contains to arrive at the claimed invention; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because "SyncML Meta-Information DTD" teaches the defining of a XML Document Type Definition (DTD), wherein DTD represents standard meta-information used in the SyncML Representation Protocol;

therefore it would have been obvious for one of ordinary skill in this art, at the time of invention was made to include SyncML Meta-Information DTD into Rao for the benefit of properly operating in accordance SyncML standard, as Rao's system operates in accordance to the SyncML standard having meta-data (e.g. meta-information); additionally it is well known that metadata is data about data and SyncML have meta-information such as parameter or attributes that are about type or content of data; therefore, by combining with Szeto's teaching, metadata may be utilized for determining the content type of data.

5. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest every claimed feature because Szeto's IM application (e.g. movie trailer) is actual data to be executed by a supporting application (e.g. media player); applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because IM application is software intending for implementing an instruction set (e.g. software executing/implementing the instruction set for rendering movie trailer, game, animation cartoon, advertisement, Flash presentation, etc.) (col. 1, ll. 55-58), and the supporting application is not a required application, as the supporting application is needed only when the IM application is unable to render the corresponding data (Fig. 12A and col. 12, l. 66 to col. 13, l. 16). Furthermore, applicant's analysis of Szeto's IM application is improper, because if Szeto's IM application corresponds to the actual data to be rendered as

argued by the applicant, then the supporting application would also be actual data to be rendered; and since the supporting application is software for rendering data, IM application is also software for rendering data.

6. In response to applicant's arguments with regard to the independent claims 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest every claimed feature in view of the summary figure between Szeto vs. embodiments of the claimed invention; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because the examiner is not fully clear where in Szeto's disclosure corresponds to applicant's summary of Szeto's system and how did applicant came to the summary of Szeto's system.

7. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature "execution is commanded by the sending client" because execution of the data identified in the message is commanded by the IM environment of the receiving client and not the IM message (Szeto, col. 12, ll. 49-53); applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, and based on applicant's arguments and citation of Szeto, Szeto teaches execution is commanded by the sending client, because the IM message formed by and received from the sending client (which is also

in line with applicant's analysis of Szeto, wherein the sending client providing the receiving client with information about an IM application), wherein based on what the IM message is, as the IM environment evaluates the IM message, an appropriate action is determined.

8. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature "executable is determined at the receiving client" because Szeto's sending client provides the receiving client with information about an IM application and hence the supporting application; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because Szeto teaches the receiving client utilizing an identifier to determine the executable (e.g. IM application or supporting application) (Szeto, Fig. 12A and col. 12, l. 66 to col. 13, l. 16), and as discussed in detail above, IM application and supporting application are both software for rendering data, and not the data to be rendered by an application.

9. In response to applicant's arguments with regard to the independent claims 1 and 41 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature "metadata" and "the content type determined at the receiving client" because Szeto does not teach metadata and Szeto's content type is

specified by the sending client; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner respectfully disagrees, because Rao and "SyncML Meta-Information DTD" teach the metadata indicating a content type, and Szeto does teach the content type determined at the receiving client, as the receiving client utilizes the identifier to determine the content type, and utilizing the corresponding IM application or supporting application based on the determination (Szeto, Fig. 12A and col. 12, l. 66 to col. 13, l. 16), and as discussed in detail above, IM application and supporting application are both software for rendering data, and not the data to be rendered by an application.

10. In response to applicant's arguments with regard to the independent claims 1 and 41 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature "the content type is determined by the receiving client from (metadata of) first data ", because Szeto's first data requires retrieval from a server and is not presented in the IM message; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because Szeto's first data (e.g. IM message) having the identifier (functionally equivalent to the claimed metadata) is utilized for determining the corresponding executable (e.g. IM application or supporting application) for rendering the received IM message (e.g. first data) (Szeto, Fig. 12A and col. 12, l. 66 to col. 13, l. 16), and as discussed in detail above, IM application and supporting application are both software for rendering data, and not the data to be rendered by an application; and Rao and "SyncML Meta-Information DTD" teach the claimed metadata indicating a content type.

11. In response to applicant's arguments with regard to the independent claims 1 and 41 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed feature "determine a suitable executable to be used by reading the properties of the metadata of the first data at the receiving client"; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner respectfully disagrees, because Szeto teaches determine a suitable executable (e.g. IM application or supporting application) to be used by reading the properties of the identifier of the first data (e.g. IM message) at the receiving client (Szeto, Fig. 12A and col. 12, l. 66 to col. 13, l. 16); and Rao and "SyncML Meta-

Information DTD" teach the metadata indicating a content type; additionally, as discussed in detail above, Szeto's IM application and supporting application are both software for rendering data, and not the data to be rendered by an application.

12. In response to applicant's arguments with regard to that Szeto solve problem on how to control information received in an instant messaging environment while the embodiments are directed to the sending client's ability to specify execution in one or more mobile phone using a non-specific command message; therefore, the control aspect is prominent at the sending client and not the receiving client; thus, Szeto teach away from the applicant's invention by using the receiving client to determine whether and what to do with receiving message; contrastingly, the claimed invention allow the sending client to control whether processing of a command message at the receiving client should occur and allow the receiving client to determine what executable should be used; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner respectfully disagrees, because even though Szeto solve a different problem then the applicant's invention, Szeto's teaching is still pertinent to the applicant's invention, wherein Szeto's sending client specify execution in one or mobile

phone utilizing non-specific message (e.g. IM message with an identifier for indicating the corresponding application to render the data); and Rao and "SyncML Meta-Information DTD" teach the receiving of a command. And Szeto does not teach away from the applicant's invention, as the sending client control whether processing of a message at the receiving client should occur and allow the receiving client to determine what executable should be used (Szeto, Fig. 12A and col. 12, l. 66 to col. 13, l. 16), as the sending client's IM message include the identifier to control the receiving client for determining what executable should be used.

13. In response to applicant's arguments with regard to that there is no rational and motivation for combining the references; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, because Rao teaches a mobile handset utilizing SyncML protocol including the meta-data for execution of a XML command. Rao does not expressly teach the meta-data indicating a content type and execution of an unidentified executable. "SyncML Meta-Information DTD" teaches the meta-data indicating a content type, and discloses said indication conforms to a XML Document Type Definition (DTD) representing standard meta-information used in the SyncML Representation Protocol. Szeto teaches execution of an unidentified executable utilizing XML protocol, and discloses the utilization of the unidentified executable utilizing XML protocol increase reliability for a user to execute and control application. It would have thus been obvious to one of ordinary skilled in the art to include SyncML Meta-

Information DTD's meta-data indicating the content type and Szeto's execution of the unidentified executable into Rao's meta-data and XML command respectively to achieve the claimed invention. As disclosed in "SyncML Meta-Information DTD" and Szeto, the motivation for the combination is to properly conforming to a XML Document Type Definition (DTD) representing standard meta-information used in the SyncML Representation Protocol (as Rao operated in accordance to SyncML protocol) and for increase reliability for a user to execute and control application.

14. In response to applicant's arguments with regard to the independent claim 1 rejected under 35 U.S.C. 103(a) that Szeto is not "pertinent to the particular problem with which the applicant was concerned" because as argued by applicant above, Szeto does not identify the corresponding application using metadata, instead identifies the supporting application using an identifier; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner respectfully disagrees, because Szeto's identifier is functionally equivalent to the claimed meta-data, for identifying an executable to operate on the received data; as for the actual claimed "meta-data," the examiner relied on Rao and SyncML Meta-Information DTD. Additionally, Szeto's identifier is pertinent to the

particular problem with which the applicant was concerned, because applicant's command specifying execution of an unidentified executable on first data is accomplished via the meta-data/identifier to identify the executable for operating on the first data.

I. REJECTIONS BASED ON PRIOR ART

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 3-10, 12-16 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rao et al. (US Patent 6,978,453) in view of "SyncML Meta-Information DTD" and Szeto (US Patent 7,188,143).

16. As per claim 1, Rao teaches a method comprising:

receiving at an electronic device (Fig. 1, ref. 107) a command (e.g. update command) specifying execution on first data (Fig. 1; col. 3, ll. 21-44; col. 6, l. 49 to col. 7, l. 19 and col. 8, l. 25 to col. 12, l. 19), wherein the first data executed to be associated with firmware update data;

utilization of metadata protocol, wherein the first leaf node would have the corresponding metadata (col. 6, l. 49 to col. 7, l. 19);

automatically determining (e.g. determining via recognition) a property of the identified first data (e.g. property identifying first data to be firmware update data) (col. 8, l. 25 to col. 12, l. 19), as the received command is recognized by the electronic device to have the property associated with firmware updating;

operating on the identified first data using an executable (e.g. module)(col. 5, ll. 23-32 and col. 5, l. 61 to col. 6, l. 4), as the module would operate on the firmware update data via downloading and updating processes.

Rao does not teach the method comprising: an unidentified executable; determine content type from the metadata; and automatically identifying an executable using the content type determined from the metadata.

SyncML Meta-Information DTD" teaches the metadata indicating a content type (Sec. 3-5 on pp. 5-12), as it is well known that metadata is data about data and SyncML have meta-information such as parameter or attributes that are about type or content of data; therefore, metadata may be utilized for determining the content type of data.

Szeto teach a system and method comprising:

an unidentified executable (e.g. unidentified supporting application) (Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), as the received message do not identify the supporting application to be utilized with the message, and after the application type is determined from the received message, the corresponding supporting application is identified;

determine a content type (e.g. application type) from metadata (Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), in combination with SyncML Meta-

Information DTD's teaching, the received message having metadata with content types including movie trailer, game, animation cartoon, advertisement, and flash presentation, and to determine the supporting application for the received message, the metadata is examining to determine the application type (e.g. content type); and

automatically identifying an executable (e.g. supporting application) using the content type determined from metadata (Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), in combination with SyncML Meta-Information DTD's teaching, the received message would be associated with content types including movie trailer, game, animation cartoon, advertisement, and flash presentation in the metadata, and by using the content type, the corresponding supporting application would be identified.

It would have been obvious for one of ordinary skill in this art, at the time of invention was made to include SyncML Meta-Information DTD's content type and metadata and Szeto's identification of the executable into Rao's operation on the first identified data for the benefit of properly operating in accordance SyncML standard as in Rao's system and also for the benefit to the having a reliable system and method for a user to execute and control application (Szeto, col. 2, ll. 30-33) to obtain the invention as specified in claim 1.

17. As per claim 3, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where Rao further teaches the method comprising wherein the command contains an identifier (e.g. URI) of the first data (Rao, col. 6, l. 49 to col. 7, l. 19 and col. 8, ll. 25-34).

18. As per claim 4, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 3 as discussed above, where Rao further teaches the method comprising wherein the identifier identifies a node of a hierarchical nodular data structure (e.g. tree data structure) (Rao, col. 6, l. 49 to col. 7, l. 19 and col. 8, ll. 25-34).

19. As per claim 5, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 4 as discussed above, where Rao further teaches the method comprising wherein the command is an exec command and the identifier is a URI contained within a source element, which is contained within the exec command (Rao, col. 6, l. 49 to col. 7, l. 19 and col. 8, l. 25 to col. 12, l. 19).

20. As per claim 6, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where Rao and Szeto further teach the method comprising wherein the command is received as XML code (Rao, col. 6, ll. 49 to col. 7, l. 3 and Szeto, col. 7, ll. 48-53).

21. As per claim 7, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 6 as discussed above, where Rao further teaches the method comprising wherein the command is a SyncML command (Rao, col. 6, ll. 49 to col. 7, l. 3 and col. 8, l. 25 to col. 12, l. 19).

22. As per claim 8, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where Rao further teaches the method comprising wherein the identified first data is stored at the electronic device (Rao, col. 3, ll. 52-63; col. 5, ll. 23-32; col. 7, ll. 38-41 and col. 11, l. 48 to col. 12, l. 19).

23. As per claim 9, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 6 as discussed above, where Rao further teaches the method comprising wherein the identified first data is stored at a first leaf node of a hierarchical modular data structure (e.g. tree data structure) (Rao, col. 3, ll. 52-63; col. 6, l. 49 to col. 7, l. 19; col. 8, ll. 25-34 and col. 11, l. 48 to col. 12, l. 19), as the data would be store in the first leaf node of the tree data structure.

24. As per claim 10, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 9 as discussed above, where all further teach the method comprising wherein the metadata is associated with the first leaf node and identifies the content type of the first data stored at the first leaf node of the hierarchical data structure (e.g. tree data structure) (Rao, col. 6, l. 49 to col. 7, l. 19; col. 8, l. 25 to col. 12, l. 19, SyncML Meta-Information DTD, pp. 5-6, and Szeto, Fig. 12A; col. 1, ll. 55-58; col. 12, l. 66 to col. 13, l. 16).

25. As per claim 12, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where SyncML Meta-Information DTD and

Szeto further teach the method comprising wherein determining the content type uses at least one of the value of a Format element and the value of a Type element associated with the first data (SyncML Meta-Information DTD, pp. 5-12 and Szeto, Fig. 12A; col. 1, ll. 55-58; col. 12, l. 66 to col. 13, l. 16).

26. As per claim 13, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where Szeto further teaches the method comprising associating a plurality of different executables (e.g. different supporting applications for movie trailer, game, animation cartoon, advertisement, flash presentation) with each of a plurality of different content types (Szeto, Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), as each different content types have the corresponding supporting application.

27. As per claim 14, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 13 as discussed above, where SyncML Meta-Information DTD and Szeto further teach the method comprising wherein automatically identifying an executable from the content type comprises identifying the executable associated with the content type (SyncML Meta-Information DTD, pp. 5-12 and Szeto, Fig. 12A; col. 1, ll. 55-58; col. 12, l. 66 to col. 13, l. 16).

28. As per claim 15, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 13 as discussed above, where Rao and Szeto further teach the

method comprising wherein the plurality of different executables are stored in the electronic device (Rao, Fig 1; col. 5, l. 23 to col. 6, l. 4 and Szeto, Fig. 12A; col. 1, ll. 55-58; col. 12, l. 66 to col. 13, l. 16), as the electronic device would have the corresponding supporting application for operating the first data.

29. As per claim 16, Rao, SyncML Meta-Information DTD and Szeto teach all the limitations of claim 1 as discussed above, where Rao further teaches the method comprising before receiving the command specifying execution of the unidentified executable on the first data, receiving commands for creating a hierarchical nodular data structure (e.g. tree data structure) including the first data at the electronic device (Rao, col. 6, l. 49 to col. 7, l. 19 and col. 7, ll. 38-41 SyncML Meta-Information DTD, pp. 5-12), as the tree data structure is created prior to the execution of the update command.

30. As per claim 41, Rao teaches a computer program product comprising program instructions embodied on a tangible computer readable-readable medium, execution of the program instructions resulting in operations comprising:

automatically determining (e.g. determining via recognition) a property of a first data (e.g. property identifying first data to be firmware update data) (Fig. 1; col. 3, ll. 21-44; col. 6, l. 49 to col. 7, l. 19 and col. 8, l. 25 to col. 12, l. 19), as the received command is recognized by the electronic device to have the property associated with firmware updating;

utilization of metadata protocol, wherein the first data would have the corresponding metadata (col. 6, l. 49 to col. 7, l. 19); and

enabling the first data to be operated on using an executable (e.g. module)(col. 5, ll. 23-32 and col. 5, l. 61 to col. 6, l. 4), as the module would operate on the firmware update data via downloading and updating processes.

Rao does not teach the computer program product comprising: determine a content type from the metadata; and automatically identifying an executable using the content type determined from the metadata for operation.

SyncML Meta-Information DTD teaches the metadata indicating a content type (Sec. 3-5 on pp. 5-12), as it is well known that metadata is data about data and SyncML have meta-information such as parameter or attributes that are about type or content of data; therefore, metadata may be utilized for determining the content type of data.

Szeto teach a system and method comprising:

determine a content type (e.g. application type) from metadata (Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), in combination with SyncML Meta-Information DTD's teaching, the received message having metadata with content types including movie trailer, game, animation cartoon, advertisement, and flash presentation, and to determine the supporting application for the received message, the metadata is examining to determine the application type (e.g. content type); and

automatic identifying an executable (e.g. supporting application) using the content type determined from metadata for operation (Fig. 12A; col. 1, ll. 55-58 and col. 12, l. 66 to col. 13, l. 16), in combination with SyncML Meta-Information DTD's teaching,

the received message would be associated with content types including movie trailer, game, animation cartoon, advertisement, and flash presentation in the metadata, and by using the content type, the corresponding supporting application would be identified.

It would have been obvious for one of ordinary skill in this art, at the time of invention was made to include Szeto's identification of the executable into Rao's operation of the first data for the benefit of having a reliable system and method for a user to execute and control application (Szeto, col. 2, ll. 30-33) to obtain the invention as specified in claim 41.

II. CLOSING COMMENTS

Conclusion

a. STATUS OF CLAIMS IN THE APPLICATION

The following is a summary of the treatment and status of all claims in the application as recommended by **M.P.E.P. 707.07(i)**:

a(1) CLAIMS REJECTED IN THE APPLICATION

Per the instant office action, claims 1, 3-10, 12-16 and 41 have received a first action on the merits and are subject of a first action non-final.

b. DIRECTION OF FUTURE CORRESPONDENCES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun-Kuan (Mike) Lee whose telephone number is (571) 272-0671. The examiner can normally be reached on 8AM to 5PM.

IMPORTANT NOTE

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alford Kindred can be reached on (571) 272-4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 21, 2009
/Chun-Kuan Lee/
Examiner, Art Unit 2181

Chun-Kuan (Mike) Lee
Examiner
Art Unit 2181